HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

W.P.No.17454 of 1997

Dated 22nd Day of Janaury, 2007

Between:

Jayasthi Siva Swaroop
.. Petitioner

And

1. The Collector, Krishna District,
   Machilipatnam
2. The Mandal Revenue Officer, Musunuru Mandal ..
Respondents

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O R D E R:

The petitioner, who was the purchaser of the land of an extent of Ac.04.85 cents situated in R.S.Nos.43/3, 44/3 and 44/4 of Katrenipadu village of Munusuru Mandal, has filed this Writ Petition questioning the notice issued by the 2nd respondent under Section 3(2) of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977 (for brevity "the Act"), by which, the petitioner was called upon to show cause as to why he shall not be summarily evicted from the land in question.

The brief facts of the case are that the petitioner purchased the above land from three assignees in the year 1995 by virtue of registered sale deeds and he has been paying land revenue since then. He has developed the land into a plantain garden by spending huge amounts. On 9.7.1997, the 2nd respondent- Mandal Revenue Officer issued a notice to him under Section 3(2) of the Act stating that the sale transaction was in violation of the Act and he was asked to show cause as to why he should not be summarily evicted from the land. He stated that the action of the 2nd respondent is illegal and without any jurisdiction for the reason that the lands which were assigned in favour of his vendors are not the assigned lands as contemplated under Section 2(1) of the Act, which reads as under

> *"Assigned land means lands assigned by the Government to the landless poor persons under rules for the time being in force, subject to the condition of non-alienation and includes poor persons under the*

relevant law for the time being in force relating to land ceilings; and the word "assigned" shall be construed accordingly".

The scheme of the Act is to prohibit alienation of assigned lands except those on payment of market value because the whole idea of the Act is to make free gift of the lands to the landless poor persons, whereas the total extent of land in question was originally assigned to the assignees as per G.O.Ms.1142 dated 18.6.1954 on payment of market value. This view was accepted by a Division Bench of this Court in W.P.No.14860 of 1989, dated 19.8.1996, which is to the following effect:

"On the other hand, the note appended to condition No.1 of 'D' form patta specifically says that this condition will not apply to cases of assignment made on collection of market value under part 1(8) of G.O.Ms.No.1142, dated 18.6.1954. By that condition, it is evident that there is no bar for alienation of lands. Therefore, it cannot be said that the lands are assigned lands, the Act No.IX of 1977 has no applicability to the assignments made to the assignees".

For the foregoing discussion, we have no hesitation to hold that the Mandal Revenue Officer-2nd respondent herein, has no authority to deal with the lands in question under the Act No.IX of 1977. Hence, the impugned orders are liable to be quashed and accordingly, they are quashed."

In view of the above legal position, the lands, which were assigned on payment of market value with regard to alienation, are not the assigned lands as contemplated under the Act 9 of 1977. Therefore, the impugned notice dated 9.7.1997 issued by the 2nd respondent in respect of the total extent of land in question is illegal, void and without jurisdiction, and the sale transaction in his favour by the assignees is valid as the assignment was made on

payment of market value and the land in question is with absolute right to alienation.

The learned counsel for the petitioner has drawn my attention to the judgment of a learned single Judge of this Court delivered in W.P.No.17467 of 1997 and submitted that in identical circumstances, the learned single Judge took the view that the notice alleged to have been issued under the provision of the Act is illegal and thus allowed the writ petition. In fact, according to the learned counsel for the petitioner, he filed three writ petitions questioning three notices issued on 9.9.1997 and the other writ petition was listed before the learned single Judge, who having heard the matter, posted it for judgment, and as the facts are akin, this writ petition can also be disposed of following the said judgment.

However, the learned Government Pleader has opposed the said submission stating that there is a difference between this writ petition and the writ petition, which was already disposed of.

In fact, the objections raised by the learned Government Pleader are the same that were urged before the learned single Judge, who disposed of W.P.No.17467 of 1997 answering those objections. If I am not in agreement with the judgment delivered by the learned single Judge, it may be a different aspect as to whether the matter is to be referred to a Division Bench or not. Having gone through the judgment, this Court is of the view that the points urged by the learned Government Pleader were already answered by the learned single Judge, whose finding is correct, and they need not be answered again. Hence this Court sees no

merits in the argument advanced by the learned Government Pleader.

Following the judgment of the learned single Judge, this Court is of the view that the impugned notice dated 9.7.1997 issued by the 2nd respondent is liable to be quashed.

In the result, the writ petition is allowed quashing the impugned notice. No costs.

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22.01.2007

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